

ASSEMBLY BILL

No. 1858

**Introduced by Assembly Member Blumenfield
(Coauthor: Assembly Member Monning)**

February 12, 2010

An act to amend Section 4148 of, and to repeal Section 4140 of, the Business and Professions Code, and to amend Sections 11364, 121349, 121349.1, 121349.2, and 121349.3 of, and to add Section 121349.4 to, the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1858, as introduced, Blumenfield. Bloodborne disease prevention: sterile syringes and needles.

Existing law regulates the sale, possession, and disposal of hypodermic needles and syringes, and requires, with certain exceptions, a prescription to purchase a hypodermic needle or syringe for human use. Existing law prohibits any person from possessing or having under his control any hypodermic needle or syringe, except in accordance with those regulatory provisions.

Existing law which terminates December 31, 2010, authorizes a county or city to authorize a licensed pharmacist to sell or furnish 10 or fewer hypodermic needles or syringes to a person for human use without a prescription if the pharmacy is registered with a local health department in the Disease Prevention Demonstration Project, established by law to evaluate the long-term desirability of allowing licensed pharmacies to sell or furnish nonprescription hypodermic needles or syringes to prevent the spread of bloodborne pathogens, including HIV and hepatitis C.

This bill would delete the prohibition against any person possessing or having under his or her control any hypodermic needle or syringe,

would recast related provisions to delete the requirement of authorization by a county or city, delete the December 31, 2010, end date, and to exempt 30 or fewer hypodermic needles and syringes for human use obtained or possessed without a prescription or license, from the prohibitions, and would make conforming changes.

This bill would permit the State Department of Public Health to authorize entities to provide hypodermic needle and syringe exchange services in any location where the department determines that the conditions exist for the rapid spread of HIV, viral hepatitis, or any other potentially deadly or disabling infections that are spread through the sharing of used hypodermic needles and syringes. The bill would specify that prescribed provisions relating to syringe and needle exchange programs do not prevent a physician and surgeon from prescribing syringes and needles to patients.

The bill would also require the department to establish a process to allow local entities to apply for authorization to provide hypodermic needle and syringe exchange services, to establish reporting standards for these entities, and to establish and maintain on its Internet Web site the address and contact information of programs providing hypodermic needle and syringe exchange services. The bill would change related hearing requirements from annually to biennially.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 4140 of the Business and Professions
- 2 Code is repealed.
- 3 ~~4140. No person shall possess or have under his or her control~~
- 4 ~~any hypodermic needle or syringe except when acquired in~~
- 5 ~~accordance with this article.~~
- 6 SEC. 2. Section 4148 of the Business and Professions Code is
- 7 amended to read:
- 8 4148. All stocks of hypodermic needles or syringes shall be
- 9 confiscated if found outside the licensed premises of any person
- 10 holding a permit under Section 4141 and found not in the
- 11 possession or under the control of a person entitled to an exemption
- 12 under Section 4143, 4144, or 4145, *or under Section 11364,*
- 13 *121349, or 121349.1 of the Health and Safety Code.*

SEC. 3. Section 11364 of the Health and Safety Code is amended to read:

11364. (a) It is unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking (1) a controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (2) of subdivision (d) of Section 11055, or (2) a controlled substance which is a narcotic drug classified in Schedule III, IV, or V.

(b) This section shall not apply to hypodermic needles or syringes that have been containerized for safe disposal in a container that meets state and federal standards for disposal of sharps waste.

~~(c) Pursuant to authorization by a county, with respect to all of the territory within the county, or a city, with respect to the territory within in the city, for the period commencing January 1, 2005, and ending December 31, 2010, subdivision (a) As a public health measure intended to prevent the transmission of HIV, viral hepatitis, and other bloodborne diseases among persons who use syringes and hypodermic needles, and to prevent subsequent infection of sexual partners, newborn children, or other persons, subdivision (a) shall not apply to the possession solely for personal use of 10 30 or fewer hypodermic needles or syringes if acquired from an authorized source a physician, pharmacist, pharmacist technician, hypodermic needle and syringe exchange program, or any other source that is authorized by law to provide sterile syringes or hypodermic needles without a prescription.~~

SEC. 4. Section 121349 of the Health and Safety Code is amended to read:

121349. (a) The Legislature finds and declares that scientific data from needle exchange programs in the United States and in Europe have shown that the exchange of used hypodermic needles and syringes for clean hypodermic needles and syringes does not increase drug use in the population, can serve as an important bridge to treatment and recovery from drug abuse, and can curtail the spread of human immunodeficiency virus (HIV) infection among the intravenous drug user population.

(b) In order to ~~attempt to~~ reduce the spread of HIV infection and blood-borne hepatitis among the intravenous drug user population within California, the Legislature hereby authorizes a clean needle and syringe exchange project pursuant to this chapter in any city and county, county, or city upon the action of a county board of supervisors and the local health officer or health commission of that county, or upon the action of the city council, the mayor, and the local health officer of a city with a health department, or upon the action of the city council and the mayor of a city without a health department.

(c) *In order to reduce the spread of HIV infection, viral hepatitis, and other potentially deadly bloodborne infections, the State Department of Public Health may, notwithstanding any provision of law, authorize and register clinics, health services organizations, community-based organizations, or other entities to provide hypodermic needle and syringe exchange services in any location where the department determines that the conditions exist for the rapid spread of HIV, viral hepatitis, or any other potentially deadly or disabling infections that are spread through the sharing of used hypodermic needles and syringes.*

(d) *The State Department of Public Health shall, in addition to activity authorized pursuant to subdivision (c), establish a process to allow local entities to apply for authorization to provide hypodermic needle and syringe exchange services.*

(e) *The department shall establish reporting standards for entities authorized to provide hypodermic needle and syringe exchange services.*

(f) *The State Department of Public Health shall establish and maintain on its Internet Web site the address and contact information of programs providing hypodermic needle and syringe exchange services.*

(e)

(g) The authorization provided under this section shall only be for a clean needle and syringe exchange project as described in Section 121349.1

SEC. 5. Section 121349.1 of the Health and Safety Code is amended to read:

121349.1. ~~A~~*The State Department of Public Health, or a city and county, or a county, or a city with or without a health department, that acts to authorize a clean needle and syringe*

1 exchange project pursuant to this chapter shall, in consultation
2 with the ~~State Department of Health Services~~ *Office of AIDS*,
3 authorize the exchange of clean hypodermic needles and syringes,
4 as recommended by the United States Secretary of Health and
5 Human Services, subject to the availability of funding, as part of
6 a network of comprehensive services, including treatment services,
7 to combat the spread of HIV and blood-borne hepatitis infection
8 among injection drug users. ~~Providers Staff and volunteers~~
9 participating in an exchange project authorized by the *state*, county,
10 city, or city and county pursuant to this chapter shall not be subject
11 to criminal prosecution for *violation of Section 11364.7 or any*
12 *other law related to the possession, furnishing, or transfer of*
13 *hypodermic needles or syringes during participation in an exchange*
14 *project.*

15 SEC. 6. Section 121349.2 of the Health and Safety Code is
16 amended to read:

17 121349.2. Local government, local public health officials, and
18 law enforcement shall be given the opportunity to comment on
19 clean needle and syringe exchange programs on an ~~annual~~ *biennial*
20 basis. The public shall be given the opportunity to provide input
21 to local leaders to ensure that any potential adverse impacts on the
22 public welfare of clean needle and syringe exchange programs are
23 addressed and mitigated.

24 SEC. 7. Section 121349.3 of the Health and Safety Code is
25 amended to read:

26 121349.3. The health officer of the participating jurisdiction
27 *or a representative of the Office of AIDS* shall present ~~annually~~
28 *biennially* at an open meeting of the board of supervisors or city
29 council a report detailing the status of clean needle and syringe
30 exchange programs, including, but not limited to, relevant statistics
31 on blood-borne infections associated with needle sharing activity
32 and the use of public funds for these programs. Law enforcement,
33 administrators of alcohol and drug treatment programs, other
34 stakeholders, and the public shall be afforded ample opportunity
35 to comment at this annual meeting. The notice to the public shall
36 be sufficient to assure adequate participation in the meeting by the
37 public. This meeting shall be noticed in accordance with all state
38 and local open meeting laws and ordinances, and as local officials
39 deem appropriate. *For hypodermic needle and syringe exchange*
40 *services authorized by the State Department of Public Health, a*

1 *biennial report shall be provided by the department to the local*
2 *public health officer based on the reports to the department from*
3 *service providers within the jurisdiction of the local public health*
4 *officer.*

5 SEC. 8. Section 121349.4 is added to the Health and Safety
6 Code, to read:

7 121349.4. Nothing in this chapter shall prevent a physician
8 and surgeon from furnishing sterile hypodermic needles and
9 syringes or prescribing hypodermic needles and syringes to a
10 person in order to prevent the transmission of a communicable
11 disease or as part of patient medical care.